



EI-4801

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VIA FEDERAL EXPRESS

Ms. Victoria J. Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 1106
395 E Street, SW
Washington, DC 20024

February 8, 2008

Re: STB Finance Docket No. 35061
Liberty Rural Rail Transportation District No. 1 --
Construction and Operation -- Liberty County, TX
Request for Waiver of EIS Requirement

Dear Ms. Rutson:

I am writing on behalf of Liberty Rural Rail Transportation District No. 1 (the "Rail District") to request a waiver of the requirements of 49 CFR §1105.6(a) which would ordinarily require the preparation of an Environmental Impact Statement ("EIS") in connection with the construction proposal that is the subject of this proceeding. The Board's regulations, 49 CFR §1105.6(d), provide that an applicant can seek to demonstrate that an Environmental Assessment ("EA") rather than an EIS will be sufficient. For the reasons set forth in this letter, the Rail District believes that an EA would be adequate to assess the environmental impacts of this proposed project.

The Rail District intends to file a petition for exemption in this proceeding seeking authority from the Board to construct a rail line in Liberty County, Texas. Applicant anticipates that the rail line will be leased to a short line railroad that will operate the line. The Rail District has not yet filed the petition for exemption because of the Board's current policy not to grant conditional exemptions, absent exceptional circumstances, until after the environmental analysis is completed. *See Alaska Railroad Corporation -- Construction and Operation Exemption -- Rail Line between Eielson Air Force Base and Fort Greely, AK*, STB Finance Docket No. 34658 (served October 4, 2007).

The environmental review process has begun. The Rail District and the undersigned met with you and staff of the Section of Environmental Analysis ("SEA") on June 28, 2007, to describe the project and to discuss the applicable environmental review procedures and requirements. Following the meeting, the Rail District requested, and SEA approved, the retention of Carter & Burgess, Inc. ("C-B") as an independent third-party consultant for this project. A Memorandum of Understanding was executed by the Rail District, C-B and SEA in September, 2007.

C-B consulted with SEA, and sent out consultation letters on behalf of SEA, in November, 2007, to potentially interested federal, state and local agencies, requesting

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Ms. Victoria J. Rutson
Page 2

February 8, 2008

that the agencies provide information on any environmental or historic issues or concerns. The letter, a copy of which is attached hereto together with a list of the agencies consulted, provided a description of the proposed project. To date, only nine responses, discussed further below, have been received by C-B.

A field visit took place on December 18, 2007, with C-B, representatives of the Rail District and Danielle Gosselin of SEA, to observe existing environmental conditions and physically inspect the proposed route and possible alternatives.

The project as proposed is to be located within a single largely rural county in eastern Texas. In planning the project, the Rail District has attempted to minimize any potential adverse impacts on the environment – it has attempted to avoid dense housing areas and wetlands, and has paralleled an existing pipeline easement to minimize the affect on landowners. The proposed route will pass through largely agricultural areas (primarily unused since the timber industry left the area) and is not expected to adversely affect or conflict with existing land use plans or local zoning.

Depending on which alternative route is selected there will be a number of crossings that will be needed. Grade separations are planned for three crossings, including a crossing over US Highway 90. The Rail District will install any necessary protection at the at-grade crossings as part of the project. The Federal Railroad Administration ("FRA") suggested grade separations between the new rail line and the existing freight railroads, and consultation with the Texas Department of Transportation regarding safety at the crossings. Although there will be a number of new crossings, the construction will enhance safety in that it will eliminate the dangerous hairpin at-grade crossing of US Highway 90 just west of Dayton.

Initially, the Rail District anticipates that most of the traffic over the line will be overhead traffic moving between Union Pacific's Baytown Branch and BNSF's Conroe Subdivision, east of Cleveland, Texas. This traffic is expected to be diverted from congested rail routes through Houston. Overall, there should not be a substantial increase in train traffic in the region, and no diversions from rail to truck are anticipated. The FRA stated the project will be beneficial to the extent it takes train traffic out of the congested Houston area. Additionally, as noted in the response of Houston-Galveston Area Council ("HGAC"), the proposal will have positive air quality benefits by reducing rail and automobile congestion in the Dayton/Liberty area. The project is located within the Houston-Galveston-Brazoria ozone non-attainment area.

The only "concerns" raised in the responses received by C-B were those received from HGAC and FEMA related to potential issues with wetlands and flood plains. The project would not cross any navigable waters of the United States. The Rail District has suggested alternative routes for the rail line, all of which attempt to avoid designated

Ms. Victoria J. Rutson
Page 3

February 8, 2008

wetlands and minimize impacts to the greatest extent practicable. A request for a jurisdictional determination will be submitted to the US Army Corps of Engineers, Galveston District to determine any jurisdictional issues and/or Clean Water Act permit requirements for the project. As suggested by FEMA, coordination with appropriate Liberty County floodplain administrators will occur to determine if floodplain development permits will be needed. The Rail District will also follow best practices in design and construction of the line to potential minimize any adverse impact on wetlands that is determined to result from the project.

There are no wildlife sanctuaries or refuges, national or state parks, or forests that would be affected by the proposed action. The US Fish and Wildlife Service website for Liberty County identifies only two species of concern. The Rail District does not anticipate the project will adversely affect natural habitats. In addition, information provided by the Texas Parks and Wildlife Department ("TPWD") indicates that no known occurrences of threatened or endangered species have been recorded within 1.5 miles of the project. However, if and to the extent that any protected species will be affected by the project or operations over the line, the Rail District will work in consultation with the US Fish and Wildlife Service and TPWD to develop appropriate mitigation measures.

The state historic preservation officer ("SHPO") was consulted, and no concerns have been raised to date. The SHPO confirmed that there are no recorded historic sites located along the proposed route. No historic structures or other potential historic or archeological resources were observed during the site visit.

The Rail District has planned the proposed routes to avoid areas with dense housing. Impacts to residences and businesses have been avoided to the greatest extent practicable. The US Department of Housing and Urban Development identified three public housing projects, but notes that each is approximately 3 miles from the proposed alignment, and does not expect them to be affected. Train traffic can be expected to lead to a corresponding increase in noise or vibration levels near the project. Sensitive receivers will be identified and noise and vibration impacts will be analyzed during the EA preparation process.

Correspondence received from the Texas General Land Office (GLO) indicates four active underground pipeline easements could be affected by the project. Any underground petroleum pipelines or major transmission lines crossed by the new track would be protected in accordance with established industry standards. No evidence of hazardous material contamination was observed within the area affected by the project during the field visit. Additional research will be conducted in accordance with ASTM Standards to determine the potential for contaminated media (soil/groundwater) or other potential concerns located along the project.



Ms. Victoria J. Rutson
Page 4

February 8, 2008

The Rail District believes that the information presented in this letter demonstrates that there will not likely be significant adverse impacts with respect to the elements to be considered under 49 CFR §1105.7(e), including transportation systems, land use, energy, air quality, noise, safety, biological resources, surface or ground water resources, or cultural resources. Further, it is anticipated that there will not be any high or disproportionate impacts on minority or low-income populations. Accordingly, the Rail District requests that SEA reclassify this rail project to one requiring an EA instead of an EIS.

Please let us know if you have any questions regarding this request, or if you need any additional information to make this determination.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric M. Hocky", is positioned above the printed name.

Eric M. Hocky

EMH/e

cc (via e-mail):

Danielle Gosselin

Sandy Wesch-Schulze, Carter Burgess, Inc.

Ruth E. Salek, Esq., Liberty Rural Rail Transportation District No. 1